IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5675 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDKHAN ALLARAKHA PATHAN & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR SHIRISH JOSHI for Petitioner(s) : 1 - 2.
Mr. Dipen Desai, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
MR VIJAY H PATEL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 23/06/2006

ORAL JUDGMENT

By way of this petition under Article 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Additional Chief

Secretary (Appeals), Revenue Department, State of Gujarat, dated 5.9.1989 in Revision Application SRD No. 64/98 in allowing the said Revision Application and by quashing and setting aside the order passed by the respondent No.2 District Development Officer, Mehsana, dated 27.10.1998 by which the District Development Officer passed the order to dispose of the plots in question in favour of the petitioners.

2. Petitioner No.1, at the relevant time, was serving as Section Officer in Sachivalaya at Gandhinagar and petitioner No. 2 was his brother. Petitioners applied for two plots admeasuring 30 x 40 ft. Situate at Village Mudarada, Taluka and District-Mehsana at the market rate for the purpose of their own residence. It is the case of petitioners that whenever such plots are to be disposed of, the Panchayat has to pass a resolution on demand made and after having received such recommendation and/or resolution from the Panchayat the District Development Officer has power either to approve the same or reject such representation. The Mudarada Gram Panchayat passed a resolution dated 22.6.1984 and decided to recommend the case of the petitioners and other 8 persons to the competent authority. It is the case of the petitioners that under Section 96 of Gujarat Panchayats Act the Gram Panchayat can

dispose of such plots subject to sanction from the competent authority, i.e., District Development Officer. The D.D.O., Mehsana, informed the petitioners by letters dated 3.5.1988 that their application dated 1.5.1984 has been decided in their favour and the plot admeasuring 30 x 40 ft. may be given to them on their deposit Rs. 3,885 each being price of the plots at Rs. 35 per sq.mtr. It appears from the record that as the petitioners were not satisfied with the price fixed at Rs. 35 per sq.mtr. and according to them it was on a higher side they submitted an application to the District Development Officer for reduction of the price, and by letter dated 15.10.1988 the District Development Officer directed the petitioners to deposit Rs. 666/- each towards the price of the plots in question at Rs. 6/- per sq.mtr. Thereafter, on deposit of the said amount a formal order came to be passed by the D.D.O., Mehsana, dated 27.10.1988 to allow the Panchayat to sell the plots to the petitioners at Rs. 6 per sq.mtr. As the plots in question were needed for public purpose, i.e., for the Cooperative Society or for Veterinary Hospital and as it was decided to sell the plots to the petitioners without holding any public auction and even inviting any application, the Sarpanch of the Mudarada Gram Panchayat preferred Revision Application SRD No. 64 of 1988 before the State Government, i.e., Secretary (Appeals), Revenue

Department, State of Gujarat and the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat, by his impugned judgment and order dated 5.9.1989 allowed the said application by quashing and setting aside the order passed by the D.D.O., Mehsana. Being aggrieved and dissatisfied with the order passed by the revisional authority, the petitioners have preferred the present Special Civil Application under Article 226/227 of the Constitution of India for the aforesaid reliefs.

3. Shri Baiju Joshi, learned advocate appearing on behalf of the petitioners, has vehemently submitted that in fact the plots were not needed for Veterinary Dispensary as other Veterinary Dispensaries were available. It is further submitted by him that there was no demand by any cooperative society for the plots in question. It is further submitted that the resolution was passed by the Panchayat and thereafter the D.D.O. has taken a decision with regard to other 8 applicants also and therefore the impugned order passed by the revisional authority should be quashed and set aside. It is further submitted that during pendency of the present Special Civil Application even the newly constituted Panchayat has passed a resolution on 29.10.1996 that plots are not required for Milk

Cooperative Society as the said society is under liquidation and it has been further resolved that such plots are also not necessary for construction of any veterinary dispensary as there is no such project and that one such dispensary is located within six Kms. Radius from the village. Therefore, considering the fresh resolution, it is requested to allow the present Special Civil Application. Shri Baiju Joshi, ld. Advocate relied upon the following judgments in support of his submission that Panchayat can dispose of the land even without holding any public auction and/or disposal of the land by the Panchayat by holding public auction is not a must;

(1) Parashram Thakur Dass & Others . Vs. Ram Chand and others, reported in AIR 1982 S.C. Page 872;

(2) Natai Bag & Others Vs. The State of West Bengal & Others, reported in AIR 2000 S.C. Page 3313;

(3) Patel Parshottamdas Chaturbhai & Others. vs. Harijan Shakarbhai Lakhabhai & Others, reported in 19 G.L.R. Page 341.

4. Shri Dipen Desai, learned AGP appears on behalf of respondent No.1, Shri V.H. Patel, learned advocate appears for respondent No.3., Mudarada Gram Panchayat, and though served

nobody appears for District Development Officer, Mehsana. Shri Dipen Desai, learned AGP has submitted that the plots in question were disposed of in favour of the petitioners without holding any public auction and without inviting any application from the public at large and at least from the village people and therefore the revisional authority is justified in quashing and setting aside the order passed by the District Development Officer. It is submitted that the normal rule is to dispose of the Government land and/or Panchayat land by public auction and/or by inviting applications from the public at large so that the needy people can get the benefit and at the same time maximum price can be fetched which can be utilised for public purposes. It is therefore requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing for the parties. It is not in dispute that the petitioner No.1 was serving as Under Secretary in Sachivalaya of State of Gujarat and petitioner No.2 is his brother. Both of them applied for the plots. It is required to be noted that normally the land vested in the Panchayat is required to be disposed of in favour of needy person. It is evident from the record that, in fact the petitioners were having other agricultural lands and properties also. Petitioners

submitted applications to the Panchayat and Panchayat passed the resolution to dispose of the plots in favour of the petitioners and other persons and recommended to the District Development Officer. Neither applications were invited from the village people/needy people nor any public auction was held. The District Development Officer, Mehsana, straightway passed an order granting permission to dispose of the land in favour of the petitioners initially at the price of Rs. 35 per sq.mtr. , which was subsequently reduced to Rs. 6 per sq.mtr. Considering the fact that the land was needed for cooperative society or for Veterinary Dispensary and observing that before disposing of the plots proper procedure was not followed, applications were not invited. The said order came to be set aside. It is also observed that as per Rule and/or policy, if the plots are made available, applications are to be invited and on receipt of such applications plots are granted as per the need of the respective applicant. However, in the present case no such application was invited, and therefore the revisional authority quashed and set aside the order passed by the District Development Officer, Mehsana.

6. It is the contention on behalf of the petitioners that the land is not needed for any other purpose, i.e., either for Cooperative Society or

for Veterinary Dispensary and that a fresh resolution has already been passed during pendency of present Special Civil Application to that effect and therefore the present petition should be allowed. Such a prayer of the petitioner cannot be granted. Even as held by the Hon'ble Supreme Court in the aforesaid two decisions, reported in *Parashram Thakur Dass & Others Vs. Ram Chand and Others (supra), and Natai Bag & Others Vs. The State of West Bengal & Others (supra),* the Government land and/or Panchayat land is normally required to be disposed of by public auction. It is true that, as observed by the Hon'ble Supreme Court , in an exceptional case for special reasons to be recorded by the State Government the land can be sold and/or disposed of without auction. The learned advocate appearing on behalf of the petitioners relied upon some observations of the Hon'ble Supreme Court in the aforesaid two decisions. However, the Judgment is to be read as a whole and one or two sentences cannot be relied upon. If the aforesaid two decisions are read as a whole, then it is held by the Hon'ble Supreme Court that to dispose of the land of a Government or Panchayat, the normal rule is to dispose of the land by public auction. However, in exceptional case, for the reasons to be recorded, the same can be done without public auction. Even in one case, the Hon'ble Supreme Court

confirmed the order passed by the High Court by which the High Court has set aside the sale on the ground that the land was disposed of without holding any public auction and that there were no special reasons recorded by the State Government. In the case of *Parashram Thakur Dass & Others . Vs. Ram Chand and others (supra),* where the land was disposed of by private negotiation. the Hon'ble Supreme Court considered the provisions with regard to disposal of the land after following certain procedure. Thus, considering the judgment of the Hon'ble Supreme Court, the normal rule is to dispose of the Government land only by public auction and after inviting applications from the Village people and/or from the public at large so that a needy person of the village and/or nearby area can get the benefit and land can be allotted in his favour. Normally, the land is to be disposed of in favour of landless person and/or needy person. In the present case, admittedly, the petitioner No.1 was serving as 'Under Secretary' with the State Government and petitioner No.2 was his brother and both of them were having sufficient land.

7. It is the contention on behalf of the petitioners that now a fresh resolution has been passed to the effect that plots in question are

not needed for any Milk Society and/or Veterinary Dispensary and therefore the petitioners are to be allotted the said plots. As stated above, assuming that the plots in question are now not needed for any public purpose and the plots are to be disposed of, in that case also as stated above the plots are to be disposed of only by public auction and after inviting applications from the Village people and for that purpose the matter is required to be remanded to the District Development Officer, Mehsana, to consider the position prevailing at present, and if the District Development Officer is of the opinion that the plots in question are required to be disposed of as the same are not needed for any public purpose, in that case it is directed that the plots may be disposed of only by holding public auction and inviting applications from the public at large so that maximum needy persons can get the benefit.

8. For the reasons stated above, the petition succeeds in part. The order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, dated 5.9.1989 in Revision Application SRD No. 64/98 is modified to the extent that the matter is remanded to the District Development Officer to consider the subsequent development and the District Development Officer is directed to consider the need at

present, and if the plots in question are not needed for any public purpose and in event if it is decided to dispose of the same, the same should be disposed of by holding a public auction and inviting applications from the public at large so that maximum price can be fetched and needy persons can get the benefit. The aforesaid exercise be done within the period of 6 months from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.